IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2187 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

NATVARSINH NATTHUBHAI ADAMAR

Versus

ADDL DEVELOPMENT COMMISSIONER

Appearance:

Dr.Mukul Sinha for MR MC BHATT for Petitioner

Mr.B.Y.Mankad, Asst.GOVERNMENT PLEADER for Respondent No. 1

MR HS MUNSHAW for Respondent No. 2

MR SHIRISH JOSHI for Respondent No. 3, 4, 5, 6

CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 17/11/2000

C.A.V. JUDGEMENT

In this petition under Article 226 of the Constitution, the petitioner has challenged the order

dated 18.3.2000 of the Additional Development Commissioner confirming the order dated 4.11.1998 passed by the District Development Officer removing the petitioner from the office of Sarpanch of the Tarsadi Gram Panchayat under section 57 of the Gujarat Panchayats Act, 1993(hereinafter referred to as "the Act").

2. The petitioner was elected as Sarpanch of Tarsadi Gram Panchayat for five years with effect from 1.1.1997. The petitioner was served with a notice dated 4.8.1998(at annexure "A" to the petition) calling upon the petitioner to show cause why the petitioner should not be removed from the office of Sarpanch, in view of irregularities alleged against him, gist of which is as under:

2.1 After taking over as Sarpanch the petitioner had called and convened only one meeting of the Gram Sabha and the petitioner had accordingly contravened the provisions of Section 93(1) of the Act.

2.2 The petitioner had got passed the resolution of the Gram Panchayat on 2.12.1997 (Resolution No.4) for allotting the parcel of land to Tarsadi Cooperative Consumer Stores without the permission of the competent authority.

2.3 The petitioner had got a fountain installed at a cost of Rs.2,00,355/- in the village without obtaining technical or administrative sanction and without making any provision in the budget or plan estimates.

2.4 The petitioner had incurred expenditure beyond the budget provision for the year 1997-98 for road repairs and such works were carried out without inviting public tenders or without getting technical and administrative sanction and the completion certificates were not obtained.

2.5 In the year 1997-98 the petitioner had spent Rs.18,93,160/- for installing street-lights as against sanctioned amount of Rs.9 lacs. Said works were also carried out without inviting public tenders or without obtaining any technical or administrative sanction and the completion certificates were also not obtained.

2.6 For the year 1997-98 there was budget provision for the civic amenities out of which Rs.2,70,000/- was spent for installation of PVC pipelines instead of cast iron pipelines and the said work was also carried out without inviting public tenders or without getting technical and administrative sanction. Completion

certificates were also not obtained for this work also.

3. The petitioner was accordingly charged for administrative irregularities in the course of discharge of his duties as Sarpanch. The petitioner submitted his reply dated 21.8.1998 (at annexure "B" to the petition) submitting in the first place that the petitioner had not committed any misconduct or abused his powers as Sarpanch. The petitioner had not committed persistent defaults of the provisions of the Act but the proceedings were initiated on the basis of malafide complaints which were made for political reasons.

3.1 As regards the first charge, the petitioner's defence was that the meetings of the Gram Sabha were convened on 13.5.97, 30.3.98 and 23.6.98. As far as the meeting convened on 30.3.98 is concerned, only 3 members were present at the meeting and therefore in the absence of quoram, the meeting was adjourned.

3.2 As regards the second charge, the petitioner's defence was that the resolution passed by the Gram Panchayat mentioned that the land be allotted to consumer cooperative stores for the purpose of godown after obtaining permission of the competent authority. Copy of the said resolution was also forwarded to the Taluka Development Officer. The resolution was passed unanimously and forwarded to the Taluka Development Officer but the said resolution was not implemented as it was to come into effect after permission of the competent authority, hence, the charge was misconceived.

3.3 As regards the third charge, the petitioner's defence was that Gujarat Glass Factory, a company situate within the limits of Tarsali gram Panchayat had donated a sum of Rs.2 lacs by cheque dated 9.8.97 after insisting in their previous letter dated 9.4.97 that they were ready and willing to donate a sum of Rs.2 lacs if the Gram Panchayat carries the work of installation as per plans prepared by the said Company. The Gram Panchayat was accordingly prepared to instal a fountain in accordance with the plans prepared by Gujarat Glass Factory at a cost of Rs.2 lacs and that amount of Rs.355/- was spent from out of the panchayat funds and the said meagre amount was required to be spent for showing the name of the donor and hence there was no substance in the charge.

3.4 As regards the fourth charge, the petitioner's defence was that in the budget for the year 1997-98 a sum of Rs.17 lacs was sanctioned for road repairs and

accordingly amount of Rs.12,20,000/- was spent under the said head and therefore the Gram Panchayat passed resolution dated 26.6.98(Resolution No.5) to spend the balance amount for the drainage scheme. In the original budget a sum of Rs.11 lacs only was sanctioned for the drainage scheme. However, since balance amount of Rs.4,80,000 was available from the road repairs head, the panchayat had a total amount of Rs.11 lacs + Rs.4,80,000/- i.e. Rs.15,80,000 for drainage scheme out of which the Panchayat spent Rs.15,33,475/- hence the amount was spent for public purpose and civic amenities.

3.5 As regards the charge in respect of installation of street lights etc, the petitioner pointed out that in the budget for the year 1997-98 provision of Rs.9 lacs was made for the purpose of street lights. The Gujarat Glass Factory situate within the limits of Gram Panchayat by their letters dated 17.4.97 and 3.5.97 allocated Rs.4.15 lacs and Rs.3 lacs i.e. Rs.7.15 lacs for installation of street lights with sodium vapour bulbs. The panchayat had spent a sum of Rs.15,59,940/- and the Panchayat passed resolution dated 26.6.98 approving the aforesaid expenditure.

3.6 As regards the sixth charge, the petitioner pointed out that earlier even before the petitioner took over as Sarpanch on 1.1.1997 by resolution No.2 dated 20.4.96 it was resolved to lay down PVC pipeline instead of cast iron pipeline . The estimates for the work were approved by the Executive Engineer of the Panchayat (R & B) by order dated 27.3.97 and technical sanction was granted on 27.3.97 and if the work was not carried out within the financial year 1997-98, the grant would have lapsed and hence the petitioner had no time to issue public advertisement for inviting tenders but the work was completed and the certificate was also granted by the Executive Engineer on 31.3.1997 which was produced before the District Development Officer and the amount was sanctioned. Hence, no fault can be found with the petitioner in respect of said work either.

3.7 As far as the common charge of not inviting public tenders for installation of street lights and works under drainage scheme are concerned, the petitioner pointed out that the quotations for street lights were invited and thereafter at the meeting of the Gram Panchayat held on 26.6.97 (item No.4), the comparative rates for street lights were assessed and the contractor who had quoted lowest rates was entrusted with the work. Similarly, for the drainage work comparative rates were assessed at the meeting of the Gram Panchayat held on

9.11.1997 (item No.5) and the contractor who had quoted the lowest rates was entrusted with the work. For repairs of roads the work was got carried out by the Gram Panchayat itself as and when the repairs were required to be carried out in different areas and the said work was not got carried out through any particular contractor. Estimates for the drainage scheme were got prepared by the Water supply and Sewerage Board.

3.8 The petitioner further pointed out that all the time the petitioner had got all the works carried out in public interest.

4. The District Development Officer considered the show cause notice, the petitioner's reply dated 21.8.98 and the report of the Taluka Development Officer and on the basis of record available with him, the District Development Officer passed the impugned order dated 4.11.98 (at annexure "C" to the petition) removing the petitioner from the office of Sarpanch. Aggrieved by the above order the petitioner preferred appeal before the Development Commissioner, which appeal came to be dismissed by order dated 7.1.1999 (annexure "L" to the petition) . The petitioner, thereupon, filed Special Civil Application No.227/99 which came to be allowed by the judgment and order dated 2.3.2000. The Development Commissioner's order dated 7.1.1999 was set aside and the matter was remanded to the Development Commissioner with a direction to reconsider the matter in light of the material which is on record by duly calling for the record and the proceedings from the District Development Officer, and take a fresh decision after hearing both sides and this was to be done having regard to the fact that the petitioner is kept out of statutory office by rendering a decision after taking into account all the relevant material.

After the aforesaid order, the Development Commissioner again passed order 18.3.2000 (Annex "O") dismissing the appeal holding that even if the Gram Panchayat had passed resolution authorising the petitioner to carry out the works in question, the Gram Panchayat had not required the petitioner to act contrary to relevant rules and regulations and, therefore, the petitioner had committed breach of provisions requiring the Gram Panchayat to invite tenders and to get the technical and administrative sanction for the works in question.

5. Aggrieved by the aforesaid order dated 18.3.2000 the petitioner has filed the present petition. At the

hearing, the learned counsel for the petitioner has submitted that while remanding the matter to the Development Commissioner, this Court had specifically observed in its judgment dated 2.3.2000 that the authorities had not at all applied their mind to the relevant material on record. This Court had also observed that application dated 30.3.1998 was given by the local leader of the political party and on the basis thereof the PA to the then Minister had sent a communication dated 30.5.1998 to the District Development Officer requiring the District Development Officer to take steps under section 57 of the Act. When the District Development Officer sent his communication dated 31.7.1998 informing the petitioner that the proceedings had been initiated against the petitioner under section 57(1) of the Act and thereafter by Fax message dated 3.8.98 sent in context of inquiry by the Minister, the District Development Officer was required to submit his report within three days. Thereafter another letter dated 8.5.98 was sent to the District Development Officer seeking information about the action under section 57 of the Act against the petitioner. By letter dated 29.5.98 addressed by the District Development Officer to the Taluka Development Officer with a copy to the Secretary to the Minister concerned the District Development Officer virtually threatened to take disciplinary action against the Taluka Development Officer unless concrete steps were taken for submitting a report for holding an inquiry against the petitioner under section 57(1) of the Act. Upon receiving FAX message dated 3.8.98 as aforesaid the District Development Officer immediately thereafter on 4.8.98 issued show cause notice.

The learned counsel for the petitioner submitted that the above facts were narrated to show that the keen interest was taken by the higher ups for proceeding against the petitioner under section 57 of the Act. The learned counsel for the petitioner further submitted that the petitioner had produced ample material on the record of enquiry to show that the petitioner had not abused his powers as the Sarpanch. The learned counsel has referred to various observations made by this Court in the said judgment and submitted that even after the remand the Development Commissioner had not referred to any such observations or material on the basis of which the said observations were made, and therefore, the impugned order of the Development Commissioner amounts to nonapplication of mind and also suffers from malafides.

6. The learned counsel for the petitioner further submitted that there is no allegation against the

petitioner about misappropriation of any funds of the Panchayat or of any of the donations made by the donors. He further submitted that there is no allegation that the works in question could have been completed at a lesser cost than the cost incurred by the Gram Panchayat. It is further submitted that various orders passed by the competent authorities like the Executive Engineer granting technical and administrative sanction were also not referred to by the Development Commissioner. Moreover, the public notices issued by the Gram Panchayat for the works in question were not at all considered by the Development Commissioner. It was lastly submitted that the petitioner was not liable to be removed from the office of Sarpanch only on the ground that the tenders were not invited by public advertisement in news papers.

7. On the other hand, Mr.B.Y.Mankad, Ld.AGP appearing for the Development Commissioner and Mr.H.S.Munshaw, learned counsel for the District Development Officer and Mr.Sirish J.Joshi, learned counsel for respondent Nos 3 to 6 have vehemently opposed the petition and have submitted that since the petitioner had not followed the relevant provisions of the Gujarat Panchayats Act, 1993 as well as Rules framed thereunder and had not obtained technical and administrative sanction for the works in question and had also not invited tenders by public advertisement in the newspapers for inviting competitive rates, the petitioner had committed persistent default of relevant provisions of the Act and also of the Gujarat Panchayats (Execution of Works, Development Schemes, Grant-in-Aid and Acquisition of Property) Rules, 1995 and the petitioner had also abused his powers.

8. Having heard the learned counsel for the parties and having given anxious thought and consideration to the rival submissions, this Court is of the view that the petition deserves to be allowed and the impugned orders deserve to be quashed and set aside for the reasons recorded hereafter.

9. Since the action taken against the petitioner is under section 57(1) of the Act, it is necessary to quote the said provisions verbatim:

> "57 Removal from office--(1) The competent authority may remove from office any member of the Panchayat, the Sarpanch or, as the case may be, the Upa-Sarpanch, thereof, after giving him an opportunity of being heard and giving due

notice in that behalf to the Panchayat after such enquiry as it deems necessary, if such member, Sarpanch or, as the case may be, Upa-Sarpanch has been guilty of misconduct in the discharge of his duties or of any disgraceful conduct or abuses his powers or makes persistent default in the performance of his duties and functions under this Act. The Sarpanch or, as the case may be, the Upa-Sarpanch, so removed may at the discretion of the competent authority also be removed from the membership of the panchayat".

10. It is necessary to appreciate that the controversy between the parties was already examined by this Court earlier when the Court found fault with the decision of the authorities on the ground that the relevant material on record in favour of the petitioner was not considered and this Court also referred to the correspondance which the authorities entered into with the District Development Officer prompting him to take action against the petitioner. Following observations in the judgment clearly show that the Court had found several infirmities in the impugned orders of removal and the Court also did not mince words in pointing out and in highlighting those infirmities:

"From the compilation which is placed on record, various resolutions of the panchayat have been pointed out which indicate that it is not as if the petitioner had on his own taken the decisions, as regards the matters which are covered under the charges. It was pointed out that though detailed material was placed on record before the District Development Officer, the District Development Officer did not take any of the material into his consideration. If he had considered the relevant material, he would have known about the resolutions passed by the panchayat. He would also have known that the petitioner had called for rates by notices which were duly published. The resolution dated 10.2.1997, if noticed by the District Development Officer, would have shown authorisation given by that unanimous resolution to the petitioner for carrying out various works during the year 1997-98. It was also pointed out that public notices which are in this compilation were issued at the instance of the petitioner and published on the panchayat's notice board and each of the

members of the panchayat was informed about such public notice by sending a copy to them as recorded below the order for issuance of public notice. A copy was also forwarded to the Taluka Development Officer. Attention of the Court was drawn to this public notice dated 12.2.1997 which is in the compilation which shows that it was published by the Talati-cum-Mantri as directed by the petitioner. Attention was also drawn to a statement dated 1.3.1997 which shows comparative rates quoted by three tenderers and that the work was given to the contractor who had quoted lowest. Similarly, attention was drawn to the resolution dated 19.3.1997 of the Panchayat in respect of the street lights authorising the petitioner to see that the work was carried out. A public notice dated 1.4.1997 in respect of inviting the rates for various work for installing the street lights was also pointed out. That notice also shows that it was published by the Talati cum Mantri on the notice board of the village panchayat and that each member was informed about the same and further that a copy was also forwarded to the Taluka Development Officer. Comparative rates which were received in respect of various items for street lights were also pointed out and it was submitted that in all these cases work was given to those who had offered lowest rates.

It was pointed from the order of the District Development Officer that the petitioner had in support of his written reply submitted relevant materials which were on pages 387 to 597 of the file. Even in the order of the appellate authority a reference is there to the record of 138 pages filed by the petitioner before the District Development Officer and to the contention that the District Development Officer had not taken these documents into his consideration.

On going through the decision of the District Development Officer as well as the appellate authority it becomes clear that very material documents which seem to have been produced by the petitioner have been totally ignored while giving findings on the above charges against the petitioner. The manner in which the enquiry was started at the behest of the higher ups who were keen to see to it that it

should be speedily done leaves one wondering. Moreover, there seems to be a deliberate avoidance to refer to the relevant resolution of the panchayat which would indicate that it was not as if the petitioner had himself undertaken these works but it was the panchayat which had collectively authorised him to undertake all these works and nothing was done behind the back of the panchayat members. Even public notices which were issued inviting rates and comparative charges which were received and the fact that lowest offerers were given the work had been ignored. The relevant material which has a direct bearing on the charges which are levelled against the petitioner has not been taken into consideration though it appears to have been placed on record as is reflected from the orders of the District Development Officer as well as the appellate authority . Even the preliminary enquiry report of the Taluka Development Officer was obtained almost under the threat of the District Development Officer that action would be taken against him unless he promptly reports against the petitioner. The authorities have ignored the fact that there have been ratification orders and resolutions made and have not considered the impact of such ratification.

The Appellate order therefore can not be sustained and is hereby set aside with a direction to the appellate authority to reconsider the matter in light of the material which is on record by duly calling for the record and the proceeding from the District Development Officer, and take a fresh decision after hearing both sides. This should be done having regard to the fact that the petitioner is kept out of statutory office by rendering a decision after taking into account all the relevant material within two weeks from the date of receipt of the order. Rule is made absolute accordingly with no order as to costs. It will be open for the petitioner to move the appellate authority for interim stay of further operation of the order of the District Development Officer."(emphasis supplied).

11. If the Development Commissioner had read the aforesaid observations in proper perspective he would have realised that this Court did not approve of the

approach of the authorities in knit-picking the actions of the petitioner as Sarpanch who had done commendable public works by successfully inviting private companies into making donations for valuable public works like drainage scheme, street lights etc. The fact remains that the petitioner had displayed the notices in the office of the Gram panchayat inviting quotations for carrying out relevant works in questions. It is true that the petitioner had not issued public advertisements in newspapers for inviting tenders and the petitioner may not have acted in accordance with the provisions of the Rules which are relied upon on behalf of the respondents, but noncompliance with the said provisions can not be considered in isolation and the allegation has to be considered in the background of the fact that donations of substantial amounts for installation of fountain and for street lights/drainage schemes were made by a private company, viz Gujarat Glass Factory situated within the limits of the Gram Panchayat . It is a well-known fact, and the Court would like to take judicial notice of the fact, that when private parties give donations for carrying out public works the plans and estimates are either prepared by such private parties or if prepared by public authorities they are scrutinised by such parties and necessary care is taken to see that such works are carried out in a more economical manner as compared to the works being carried out in the typical bureaucratic fashion. The Court would hasten to add that it is not that the provisions for inviting public tenders through public advertisements in newspapers are to be given a go by in all cases and where the concerned sarpanch has abused his powers the Court would not take a lenient view, but it is not even the case of the respondents that the petitioner had misappropriated the public funds nor is it the case of the respondents that the public works in question got carried out by the petitioner as ratified by the Gram Panchayat could have been carried out at a lesser cost.

12. It is true that in Kishorebhai Bhailalbhai Patel vs Development Commissioner in 1995(2) GCD 164 this Court held that when there is no quoram for meeting of Gram Panchayat and the meeting is adjourned for want of quoram, no quoram would be necessary for holding the meeting and no fresh notice for holding the meeting was required to be given and that if the Sarpanch commits breach of provisions of Section 83(1) of the Act, action can be taken against him. However, the said case pertained to a Sarpanch who was found guilty of several irregularities including failure to recover the amounts from the octroi ijaradar.

13. It is also true that in another decision this Court held that not inviting tenders through public advertisement would amount to misconduct and the Sarpanch can be removed from the office on that ground. However, the same learned Judge who rendered the said decision has found in the facts of this very case that there was a lot of material on record to show that the petitioner had acted bonafide and the said material was ignored by the Development Commissioner and therefore the matter was remanded. As already discussed above, the infirmities in not inviting tenders through public advertisement in newspapers in respect of works in question is required to be examined in the background of other facts including the fact that substantial funds were made available by a private company for the works to be carried out in accordance with its own plans and estimates and that quotations were invited through displaying of notices in the Gram Panchayat office and various other facts which are noted in the judgment dated 2.3.2000 of this Court in the previous petition.

14. The learned counsel for the respondents submitted that even if the order of Development Commissioner was required to be set aside since the order of the District Development Officer is exhaustive and deals with all the charges and the reply given by the petitioner, the same can not be stigmatised as suffering from nonapplication of mind.

In this connection, however, it is required to be noted that the District Development Officer had passed the impugned order not merely after considering the show cause notice and the reply given by the petitioner but after heavily relying on the preliminary inquiry report of the Taluka Development Officer which was never supplied by the respondent authorities to the petitioner. In this connection, this Court would like to refer to the decision dated 7.3.2000 of this Court in Special Civil Application No.234/99. There also grievance was made about nonsupply of the report of the Taluka Development Officer. The Court found that the Taluka Development Officer's opinion had weighed with the District Development Officer and therefore the same should have been supplied to the petitioner before taking the same into consideration. In the facts of the instant case also there is no dispute about the fact that the Taluka Development Officer's report was not made available to the petitioner. In fact, as noted in the judgment of this Court in the previous petition of this very petitioner against the order of removal, this Court noted

various letters on record showing that the Taluka Development Officer was threatened to submit the report for initiating proceedings under section 57(1) of the Act. Because of the manner in which the enquiry was initiated against the petitioner and the manner in which the Development Commissioner has ignored the observations of this Court in its judgment dated 2.3.2000 in Special Civil Application 227/99 this Court has no option but to express its view that the power of removal under section 57(1) of the Act has not been exercised by the authorities for the objects and purpose for which such powers are required to be exercised for removing an elected representative of the people from the elected statutory office of Sarpanch under the Act. It is also necessary to note that in his impugned order the Development Commissioner has not given any adverse finding against the petitioner on other charges and that the only allegation which weighed with the Development Commissioner in confirming the order of removal is that the petitioner had never obtained technical and administrative sanction for the works. For the reasons which are given hereabove the Court finds that in the peculiar facts and circumstances of the case, the lapse/s on the part of the petitioner do not warrant any such stigmatisation which could justify the invocation of powers under section 57(1) of the Act.

15. In view of the above discussion, the petition is allowed. The impugned order, dated 4.11.1998 passed by the District Development Officer, Surat and the impugned order dated 18.3.2000 passed by the Additional Development Commissioner (at annexures "C" and "O" to the petition respectively) are quashed and set aside. The petitioner shall be restored to the office of Sarpanch of Tarsadi Gram Panchayat within three weeks from the date of receipt of the writ of this Court or a certified copy of this judgment, whichever is earlier.

Rule is made absolute accordingly. There shall be no order as to costs.

17.11.2000 (M.S.SHAH,J)